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NORTH CAROLINA



Date: November 17, 2014

To: Thomas J. Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager

From: Steven L. Medlin, AICP, Planning Director 

Subject: *Unified Development Ordinance* Text Amendment, Tree Coverage Calculations (TC1300002)

Summary. Text amendment TC1300002 is a privately initiated application to amend the method of calculating required tree coverage areas pursuant to Sec. 8.3, Tree Protection and Tree Coverage, of the *Unified Development Ordinance* (UDO). The Durham City Council held a public hearing on this item at its February 3, 2014, meeting, and continued the item until May 19, 2014, to allow the applicant to consider revisions based upon comments received at the hearing. At that meeting, the City Council closed the hearing and referred the item back to the administration upon the request by the applicant.

Based upon comments received during the February public hearing, the applicant has subsequently revised the request to limit the exemption to single-family development, only tree replacement, and to exclude the same area from density and impervious surface calculations.

Recommendation. Staff recommends approval of the attached ordinance to amend tree coverage calculation requirements of the *Unified Development Ordinance* (TC1300002), and recommends approval of the attached consistency statement declaring the request consistent with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest. The Planning Commission recommended approval, 14-0, of the text amendment on November 12, 2013.

Background. The text amendment application is a privately initiated amendment submitted by Horvath Associates. The current UDO requires tree coverage on most development sites within the Suburban Tier, and for residential zoning districts within the Urban Tier. Tree coverage, pursuant to Sec. 8.3, Tree Protection and Tree Coverage, can be satisfied by setting aside a certain percentage of the development site as tree preservation, tree replacement, or a combination of both. The UDO currently provides tree coverage calculation exemptions for three instances:

1. Existing water bodies such as streams and ponds (paragraph 8.3.1C.5);
2. Right-of-way dedications for the widening of existing right-of-way (paragraph 8.3.1C.5); and

3. A maximum reduction of 33% of the total development tract with documentation that the area has been in continuous agricultural use since January, 1980 (paragraph 8.3.1E.7).

Based upon comments received by staff after initial review of the application (Attachment A), the applicant revised the request to limit the exemption to apply only to existing easements of record that measured at least 50 feet in width. On October 2, 2013, the JCCPC reviewed this version of the text amendment application and indicated no concerns with the proposal. The Planning Commission held a public hearing on the text amendment on November 12, 2013, and recommended approval with a unanimous vote. The request was heard by the Durham City Council on February 3, 2014, and continued the hearing to May 19, 2014, in order for the applicant to consider revisions to the text amendment that addressed concerns raised at the public hearing.

On May 19, 2014, the City Council closed the hearing and referred the item back to the administration at the request of the applicant. Based upon comments received during the February public hearing, the applicant has subsequently revised the request heard by City Council in February (Attachment A1). The applicant has requested this item to be applicable only within the City jurisdiction, thus no Durham Board of County Commissioners hearing is scheduled.

Issues. The applicant has revised the original request proposed to City Council in February. That request consisted of an exemption from tree coverage calculations of the area within existing utility easements measuring at least 50 feet in width. The primary concerns raised at the February hearing were that a trade-off should be imposed on developers that wish to utilize the easement exemption. The comments were that the same amount of area a developer can reduce from tree coverage calculations should also be applied to density and impervious surface calculations. The revised application submitted by the applicant addresses those concerns and provides additional limitations. The revised request would do the following:

1. Allow the exemption only for single-family residential developments;
2. The exemption could only be applied to tree replacement calculations. It cannot be applied to tree preservation area calculations; and
3. The exemption area cannot be used for density or impervious surface calculations.

Staff agrees that an exemption for substantial, existing utility easements is warranted due to the general inability to use an easement area for the planting of trees, or to maintain them where they are allowed, and is generally consistent with existing calculation exemptions within the UDO.

The proposed amendment, as revised, does not conflict with policies within the *Comprehensive Plan* or any other officially adopted plan. Policy 7.1.4c, Tree Canopy, directs staff to develop regulations to increase canopy in the Suburban and Urban Tiers, and has been executed through the establishment of the tree protection and coverage regulations within Article 8, Environmental Protection. The *Plan* also states within the Summary of Issues of Chapter 7, Conservation and Environment Element, that, "Land use policies and regulations should strike a balance between achieving broader community objectives of environmental protection and protecting ecosystem integrity while recognizing the rights of private property owners." The request appears to strike this balance by the limited and targeted nature of the calculation exemption request, supported by the precedent of existing calculation exemptions found within the UDO.

The request appears reasonable due to the limited applicability in type and size of easement, and type of development; and limited applicability to only tree replacement areas due to the inability to plant or maintain trees within such easements.

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Attachment:

- Attachment A:** Application by Horvath Associates
- Attachment A1:** Application by Horvath Associates - Revised
- Attachment B:** An Ordinance to Amend Tree Coverage Calculation Requirements of the *Unified Development Ordinance* (TC1300002)
- Attachment C:** Statement of Consistency pursuant to NCGS § 160A-383
- Attachment D:** Planning Commission Comments